IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO.2105 OF 2006**

Shri Uttam Raghunath Babar & Anr. ... Petitioners

Vs.

Sanjay Agarwal & Anr. ... Respondents

Mr. Anil Lalla i/b M/s. Lalla & Lalla for the petitioners.

Mr. A.R. Patil, A.P.P. for the State.

**CORAM : SMT. RANJANA DESAI, J.**

**DATED : JULY 27, 2007.**

**P.C.:-**

1. The petitioners are aggrieved by order dated 5/8/2006 passed by the Additional District & Sessions Judge, Thane in Criminal Revision Application No.125 of 2006. By the said order, the learned Judge has rejected the criminal revision application filed by the petitioners.

2. It appears that the petitioners have filed several complaints against respondent 1 to the Senior Inspector of Police, Nerul Police

Station, Nerul. The petitioners have suggested in the complaints that respondent 1 has links with the underworld and have stated that he is a constant source of harassment to the petitioners and his activities result in breach of peace. In chapter proceedings initiated under section 107 of the Code of Criminal Procedure, 1973 at the instance of the petitioners, on 18/11/2002 the Special Executive Magistrate, Navi Mumbai, upon consideration of the entire record, inter alia, came to a conclusion that though the petitioners and respondent 1 are neighbours, no untoward incidents have taken place and it cannot be said that on account of activities of respondent 1, there is any nuisance to the residents of the area. The Special Executive Magistrate came to the conclusion that the dispute between the petitioners and respondent 1 is of personal nature and if the petitioners are aggrieved, they would be at liberty to file a private complaint. The chapter proceedings were thus dropped.

3. After this order was passed, respondent 1 filed a complaint under section 500 of the Indian Penal Code (for short, “the IPC”) before the Judicial Magistrate, First Class, Navi Mumbai vide C.C. No.4354 of 2003 alleging that because of the chapter case and

defamatory allegations made by the petitioners, the reputation of respondent 1 was tarnished. On this complaint, the learned Magistrate issued process. The petitioners filed revision application before the Sessions Court at Thane challenging the issuance of process. As stated earlier, the said revision application having been dismissed, the petitioners have approached this court.

4. I have heard, at some length, Mr. Lalla, the learned counsel appearing for the petitioners. He drew my attention to explanation 8 to section 499 of the IPC. He submitted that the petitioners had made complaints to the police in good faith and, therefore, it cannot be said that the petitioners are guilty of defamation. The learned Magistrate should not have, therefore, issued process. He submitted that the learned Sessions Judge failed to appreciate that the case of the petitioners is covered by explanation 8 to section 499 of the IPC and, therefore, the impugned order may be set aside.

5. It is not possible to accept this submission of Mr. Lalla. The learned Sessions Judge has rightly said that whether the petitioners have acted in good faith or bad faith is a question of

fact. It is only after the evidence is led that this question can be decided. In my view, the learned Sessions Judge has rightly dismissed the revision application. There is no substance in this petition. The petition is dismissed.

6. However, I make it clear that the observations made by me in this order are prima facie observations and the trial court should not be influenced by them while deciding the case. The trial court shall decide the case independently and in accordance with law.

**[SMT. RANJANA DESAI, J.]**